REMARKS

Claims 1-86 are pending. Claims 1-12, 19-20, 24, 27-28, 32-37, 43-44, 47, 49-51, and 55-86 stand rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,521,631 to Budow et al. Claims 52-54 stand rejected under § 102(e) as anticipated by U.S. Patent Application Publication No. 2002/0124249 to Shintani et al. Claims 16-17, 23, and 46 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,521,631 to Budow et al. Claims 13-15, 18, 21-22, 25-26, 29-31, 38-42, 45, and 48 stand rejected under § 103(a) as being unpatentable over U.S. Patent No. 5,521,631 to Budow et al. in view of U.S. Patent Application Publication No. 2004/0261095 to Sezan et al.

Reconsideration is requested. No new matter is added. The rejections are traversed. Claims 1, 13, 16-17, 20, 23, 34, and 45-46 are amended. Claims 12, 19, 43-44, and 52-54 are canceled. Claims 1-11, 13-18, 20-42, 45-51, and 55-86 remain in the case for consideration.

REJECTIONS UNDER 35 U.S.C. § 102(b)

Claim 1 is directed toward a system for delivering digital content on demand in a multiple unit environment, the system comprising: a server local to the multiple unit environment, the server including a memory storing the digital content and content metadata about the digital content stored in the memory of the server, and capable of supporting multiple simultaneous asynchronous accesses to the digital content; a billing system for billing each individual unit based on use of the digital content, the billing system coupled to the server and including a default rate for the digital content and a custom rate for the digital content; and at least one access system in a plurality of units in the multiple unit environment, the access system designed to access the digital content stored in the memory on the server.

Claim 34 is directed toward a method for delivering digital content, the method comprising: receiving a request for the digital content from a unit in a multiple unit environment at a server; accessing the digital content from a memory on the server; delivering the digital content to the unit, the delivery of the digital content being independent of an asynchronous delivery of a second digital content to a second unit in the multiple unit environment; accessing a default rate for the digital content; accessing a custom rate for the digital content; accessing a rate key from a user profile; and selecting the default rate or the custom rate for the digital content, based on the rate key.

Claim 1 has been amended to include the features of claim 12. In rejecting claim 12, the Examiner argued that Budow teaches content metadata. The Examiner states that "[f]or instance, Budow discloses that the server 12 includes information about the programming

stored in the memory so that when it receives commands from the control computer 13, the server 12 selects a requested programming to transmit to the appropriate room terminal" (Office Action dated May 20, 2005, page 5). Programming information is independent of the content, and is used only to select content and transmit it to a particular destination at a particular time. This programming information is analogous to the programming of a VCR. The VCR knows what channel to record, and how long to record. But the mere fact that this information is programmed into the VCR does not mean that the VCR stores metadata about the program. Content metadata is metadata of the content: that is, data about the content. Examples of content metadata are shown in FIG. 3, and described on page 7, lines 14-22 of the specification; programming information simply is not content metadata.

While Budow does make a passing mention of an identification code in column 13, lines 55-61, Budow fails to explain the significance of this identification code, or how any information about the programming can be obtained from the identification code. Accordingly, the Applicant believes that the identification code is just that: it identifies a program. It does not provide any information about the selected program, and accordingly is not content metadata. And even though Budow says at the top of column 14 that the system control computer can determine the type of programming the customer prefers, nowhere does Budow explain how the system control computer makes this determination. Thus, Budow fails to enable the identification code to be content metadata. As prior art must be enabling to qualify as prior art (*See Motorola, Inc. v. Interdigital Tech. Corp.*, 121 F.3d 1461, 1471, 43 U.S.P.Q.2d 1481, 1489 (Fed. Cir. 1997) (quoting *Beckman Instruments, Inc. v. LKB Produkter AB*, 892 F.2d 1547, 1551, 13 U.S.P.Q.2d 1301, 1304 (Fed. Cir. 1989))), Budow does not qualify as prior art to teach content metadata.

Accordingly, Budow does not teach or suggest content metadata, and accordingly claim 1 should now be patentable under 35 U.S.C. § 102(b) over Budow.

Claims 1 and 34 have been amended to include the features of claims 19 and 44. In rejecting claims 19 and 44, the Examiner has argued that Budow describes customers being billed for services. But Budow fails to teach or suggest having multiple billing rates for a particular piece of content. Similarly, neither Shintani nor Sezan suggest multiple billing rates.

It is also worth noting that in rejecting claims 23 and 46 as being unpatentable over Budow, the Examiner has taken Official Notice that providing a discount rate for a product or service is known in the art. But this discount can be applied to either of the billing rates. In other words, claims 23 and 46 suggest four different billing rates: the default billing rate, the

custom billing rate, the default billing rate with a discount, and the custom billing rate with a discount. Accordingly, it would be incorrect for the Examiner to argue that one of the two billing rates described in claims 1 and 34 would be a discounted billing rate, as such an interpretation would render claims 23 and 46 unneeded.

Accordingly, as Budow fails to teach or suggest multiple billing rates, claims 1 and 34 should now be patentable under 35 U.S.C. § 102(b) over Budow. And because claims 1 and 34 should now be allowable, claims 2-11, 13-18, 20-33, 35-42, 45-51, and 55-86, which depend from claims 1 and 34, should also be allowable.

For the foregoing reasons, reconsideration and allowance of claims 1-11, 13-18, 20-42, 45-51, and 55-86 of the application as amended is solicited. The Examiner is encouraged to telephone the undersigned at (503) 222-3613 if it appears that an interview would be helpful in advancing the case.

Respectfully submitted,

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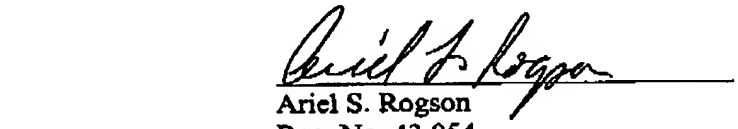

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